

Albany 10

JACOB O. EWING

vs.

WILLIAM S. BLIGHT & *al.*

} C. C. U. S. IN EQUITY.

} OCTOBER SESSIONS, 1856.

} No. 5.

A N S W E R.



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To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, in Equity.

The joint and several answers of William S. Blight, Isaac O. Blight, Elizabeth S. Garrett, and her husband Thomas H. Garrett, Deborah Blight, William S. Blight, and Jonathan Dickinson Sergeant, executors of Elizabeth B. Sergeant, deceased, William S. Blight, Isaac O. Blight, and the said J. Dickinson Sergeant, executors of Mary V. Blight, deceased, and William S. Blight, and Isaac O. Blight, trustees under the will of the said Mary V. Blight, deceased, to the bill of complaint of Jacob O. Ewing.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said plaintiff's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering say:

That the defendant, J. Dickinson Sergeant, had no knowledge personally of most of the matters in said bill inquired of or set forth, which occurred prior to the death of the said Mrs. Sergeant; and that the said William S. Blight, the oldest of said other defendants, was in the year 1842, a period to which many of said inquiries are directed, only sixteen years of age, and having been, after he reached maturer age, the only one of said defendants who had personal knowledge of, and concern with, the affairs of said Mrs. Sergeant, prior to her death, all of said defendants are compelled to answer upon information and belief as to many of said matters, and most of them as to the larger part thereof.

That true it is that said plaintiff, for some years prior to the year 1847, had under his care and management the real estate of said Mrs. Sergeant, who then, and before and after that date was the holder of a considerable amount of landed property in the city of Philadelphia, of which a large part consisted of vacant and unimproved lots; but while these defendants admit that portions of said real estate were incumbered by mortgages

and otherwise from time to time, and portions thereof subject to ground rent, and that the said Mrs. Sergeant, who some years before had been quite rich was much reduced in her means and circumstances, they do, upon information and belief, deny that she was then or afterwards in such difficult or straitened circumstances, that she had either in the year 1842, or at any time, seriously contemplated or entertained the idea of making a general assignment of all her estate for the benefit of her creditors, or that she was regarded by her friends and relations as an insolvent person; on the contrary, while they do not know what was her hope or belief in fact, or as expressed to said plaintiff, as to the amount she was worth, they believe and aver that she was not only solvent, but had and knew that she had a large and valuable surplus of property after the payment of all her debts, and that she died in June, 1852, leaving behind her a very large estate which is now enjoyed by said defendants, and the amount and value of which are, as these defendants believe, mainly owing to the regular, ordinary, and anticipated increase in the value of land in and near the said city, and not to the skill or capacity of said plaintiff, or his great devotion to her interest; as to which skill and devotion, which are, in different ways, again and again reiterated and asserted in said bill, these defendants answering, once for all, say, that they believe him to be and to have been greatly wanting in judgment, wisdom, and sound discretion in the management of such affairs, and a person not calculated to have done the best for Mrs. Sergeant or her estate under the circumstances, and that as to his industry and attention to her business prior to the year 1847, they have no knowledge or recollection which will enable them to answer with certainty, but after that date, after his own manner and in carrying out his own peculiar views, they believe him to have been active and energetic as her agent.

That true it is, also, that said Mrs. Sergeant did, at one time, advertise the bulk of her property for sale; and these defendants believe it to be true that no actual sales thereof were made at that time.

And these defendants further answering, say, that the said plaintiff was a distant relative, viz. a cousin of the husband of the said Mrs. Sergeant, and had for a long time her confidence in business and other relations, and particularly as her agent in the management of her property; but that said confidence was much impaired before her death, indeed destroyed to such an extent that she cancelled and burnt the will in which he was named as executor, principally because he was so named therein,

and appointed others in his place; but they have no knowledge as to the confidences of said Messrs. John and Thomas Sergeant in and with said plaintiff, in or about the year 1842, or their advise or instructions to Mrs. Sergeant about her will or otherwise, or their views and objects in making said will, or the particular clauses thereof.

And these defendants admit that among other items of property in part owned by Mrs. Sergeant, was a lot of ground on the Ridge Road, near Francis street, in said city, containing about seven acres, subject to a ground rent of two thousand dollars, payable half-yearly, the first days of April and October, to John Hare Powel, by Mrs. Sergeant, and Messrs. Maule, Walker, and Bosler, the grantees thereof, by deed of March 25th, 1836, each of them having an equal fourth part or interest therein; they believe said exhibit A. to be a true description thereof, but for greater certainty refer to said deed. And they further admit that said lot was unimproved, and not capable, until improved or sold, of yielding a very large income; but they do not admit or believe that its only or best use was a pasture lot. These defendants cannot now state exactly of their own knowledge what the annual taxes were on said lot, but answering upon information and belief, they aver that they did not amount to near the sum mentioned in said bill. True it is that owing to the failure of said Maule, Walker, and Bosler, to pay regularly their portions of the expenses of said lot, they fell almost entirely upon Mrs. Sergeant, who was compelled to raise and pay a very large proportion of the same; but what her income from said lot was they cannot say. Said lot has been made liable for curbing and paving and other municipal charges, but when claims therefore began, or the amount thereof, these defendants cannot say. Suits were brought against Mrs. Sergeant from time to time for ground rent, but how regularly, said defendants do not know; and proceedings were also had for the securing and recovery of municipal liens; but whether exhibit B. is a true memorandum of such suits and proceedings, they do not know. Said suits, when they ran to judgment, did, of course, become liens on Mrs. Sergeant's real estate, but these defendants do not now know of or remember any actual loss or inconvenience resulting therefrom.

And these defendants further answering, say, that they do not admit that the income of Mrs. Sergeant's whole estate, real and personal, was unequal to the payment of the taxes, expenses, and interest of incumbrances on said lot, or that Mrs. Sergeant was obliged to resort to raising money on loans at exorbitant

usance, and to sales of her capital to meet the current expenses of living; or that owing to the annual liability on her part, to the expenses of said lot, it was thought by her advisers absolutely necessary that some active steps should be taken for her relief, and to prevent her from being brought to speedy ruin; or that the capabilities of said lot being carefully considered by Mrs. Sergeant and her advisors, aided by a real estate broker, it was reckoned and stated as the result of such consideration, that if the ground rent were paid off, a sum of ten thousand dollars might be raised on the lot by mortgage, according to an estimate which left the property at that time \$1400.00 a year in ground rent alone, worse than nothing; but require that said plaintiff shall make proof of the same, if they be or become facts material to the case.

And these defendants further answering, say, that they have no knowledge of the previous considerations or negotiations which led to the execution of the paper of the 2d of March, 1847, or the motives of said plaintiff in signing the same, or the interventions of the Messrs. Sergeant with reference thereto; but they aver that said paper was executed on said day in duplicate, and was the full result of and embodied the agreements between the parties prior thereto, and became and remained the one only contract between the parties in respect to the subject matter thereof, merging all conferences, and negotiations, and parol understandings, whatever; said paper has since the death of Mrs. Sergeant been frequently used and treated and given in evidence in suits at law, by said plaintiff, as the real and only agreement between the parties thereto in respect to said lot. Said plaintiff has taken the advice of counsel thereon, and has in all the litigations to which the same has led, never proved or produced any other contract, as these defendants have been informed by their counsel and verily believe.

And these defendants admit, that in or about the year 1846, she the said Mrs. Sergeant, by sheriff's sales and otherwise, acquired the several interests of her said former co-owners; but they are not aware, nor do they believe, that such acquisition was made with a view to said agreement of March 2d; on the contrary, they believe it to have been made for her own benefit and protection; and they further believe, that said plaintiff never sought or suggested the taking the titles to said interests or any of them in his own name.

And these defendants further answering say, that they have no knowledge, except from said plaintiff, of the efforts made after said 2d day of March, 1847, to bring said lot into

the market, or of the means resorted to of effecting said object, or the reasons thereof, or the obstacles to be surmounted in so doing, or why said efforts failed, or for what reasons or by whose advice the subsequent uses and improvements of said lot were resorted to; but they admit that to fit said premises for a drove yard, and hay, straw, and cattle market, costly and extensive improvements were made. Whether their extent is correctly set out in said bill, on page 9 thereof, these defendants do not know; and as to the source from whence the moneys came to pay for the same, they will hereafter answer more fully. For the duties and obligations of said plaintiff under said paper of March 2d, and their ascertainment, they leave said paper to the Court.

And these defendants further say, that, except from said plaintiff, they have no knowledge of the nature of said Butchers' and Drovers' Association, its rules and regulations, &c., though they have no reason to doubt the description thereof given by said plaintiff; and answering upon information and recollection, they say that said plaintiff did succeed in inducing said association to use said lot as a market, and that by this means many cattle were brought to said yard; and they believe that he did also induce another and somewhat similar company to hold a cow market there, and that profits were made by reason thereof, and in other ways, but what said profit was, in amount, they cannot say.

And these defendants admit that said plaintiff's attention to the said yard and markets, and the business thereat, took much of his time, and required energy and activity; that said plaintiff has in the main correctly stated the nature of the business thereat, and reasons for industry and attention connected therewith; but they aver that he had the constant assistance, for a large part of the time, of said William S. Blight, and said B. F. Wright, and that the statement, that between the spring of 1846, and the time of his losing possession of said lot by reason of the ejectment, he expended upon the business of the said lot, and the operations under said agreement, on an average five hours of each week-day, is greatly exaggerated and untrue.

And these defendants cannot state what income said premises would now be producing if managed as managed by said plaintiff; nor have they the means of making an accurate comparison between the profits thereof in said plaintiff's hands, and since they recovered possession thereof. They are advised that they are not bound to state the present income thereof, or whether it has increased or fallen off under their care.

And as to the allegation of said plaintiff in his said bill, that

the cost of erecting the said improvements was borne by him, and not by Mrs. Sergeant, these defendants answer, that from an early period of his agency, said plaintiff kept a running account with Mrs. Sergeant, until her death, that for many years said account showed a large balance from time to time in favour of Mrs. Sergeant, but after said improvements began showed from time to time a large balance in favour of said plaintiff, which balance increased gradually until near the time of her death; but these defendants allege and expressly charge, that said balances and said accounts showing the same, were and are in many very material respects mistaken and erroneous; and though they do not deny that while said improvements were progressing, said plaintiff may have been from time to time in fact her creditor in said general account, they do expressly charge, that, at the termination of said action of ejectment, and at the present time her estate did not and does not owe him the said plaintiff anything; and that therefore all his the said plaintiff's advances for said improvements, if he ever made any, were repaid to him in law and in fact prior to the filing of his said bill. Of the said plaintiff's said alleged sacrifices in raising money to carry on said improvements these defendants have no knowledge, and pray that if said alleged facts in reference thereto are material, he may be compelled to prove the same; nor have they knowledge of any advances by said plaintiff of his money or credit for the purchase of corn, hay, or straw, but pray that this fact, if true, may be also proved. The accounts of said business at said yard, which are now in the possession or under the control of said plaintiff, but which have been inspected by certain of these defendants, are in great disorder and confusion, and show, as these defendants are informed and believe, omissions to credit Mrs. Sergeant with large sums to which she was entitled.

And these defendants further say, that at the time the same bears date, Mrs. Sergeant did sign a paper, of which they believe paper D to said bill annexed to be a copy, but what negotiations or consultations led to the same they do not know. Answering upon information and belief, however, they aver that said paper was signed by her at the request of said plaintiff, who, as they believe, never during her lifetime alleged that he could sell without her permission, both as to time and price, or assumed any other position toward her than that of agent to principal. Said plaintiff, after the execution of said paper, no doubt endeavoured to sell said lot, and may have been in the market for that purpose, when she died. Why he failed to sell, these defendants do not know.

And these defendants, denying that Mrs. Sergeant in her lifetime gave any countenance to the present views of said plaintiff in regard to the effect of said agreement of March 2d, 1847, or admitted any other or further joint right on the part of said plaintiff with her, than that which the law deduces by its construction from said agreement, expressly say, that said plaintiff's possession of said Sheriff's deeds, and of said lot, if he can be said to have had possession thereof, and his holding of said leases, and building and improvement contracts, and of the said agreement with Mr. Wright, and policies of insurance, and books and papers of said business at the yard, were not in anywise in the way of, or for security for any interest of said plaintiff in the premises, but solely, like his possession or holding of many other papers of said Mrs. Sergeant, the act of an agent, to facilitate the business of his agency; that they believe that said plaintiff never, in the lifetime of Mrs. Sergeant, gave any evidence of any allegation on his part of an estate in said lot, legal or equitable, by reason of said paper of March 2d, 1847, or received from her any admission or recognition of any such estate in him. On the contrary, he, the said plaintiff, gave divers evidences that he claimed no present vested title or interest in said premises, by deliberately procuring deeds from the Sheriff and a co-owner, to be executed to her in severalty,—by asking for said paper D,—by mingling in one series of accounts his transactions with her in respect to said lot, and all other properties of which he was agent; showing that he treated all as alike under his agency, and involved in one general agency account; and by other acts and implied admissions which might be mentioned.

And these defendants admit, that paper F, to said bill annexed, is a copy of the last will of the said Mrs. Sergeant, and refer to the same as best showing its own provisions; and they aver and allege, that upon and after her death, which happened on or about the 8th day of June, 1852, said agreement of March 2d, 1847, became inoperative, and of no further force, having been a mere contract of agency, revoked by her death; and that in taking such a view of it, they do not, as they believe, differ from the view which Mrs. Sergeant and her friends and advisers would have taken of said agreement, if their attention had been called to the effect of such a contingency.

And the said William S. Blight answering upon recollection, and the said other defendants upon his information, further say, that soon after the death of Mrs. Sergeant, the said William S. Blight being in the office of Mr. Thomas Sergeant, said

plaintiff entered, and thereupon a conversation ensued about the estate of the said Mrs. Sergeant, of the details of which said William S. Blight has no recollection; but he and they utterly deny that the said William S. Blight did at said interview, or any other interview, receive from Mr. Sergeant, and assent to any such advice or opinion as that in said bill set forth, or did express, that he and the other executors of Mrs. Sergeant were about to take such a course as that indicated in said supposed advice or opinion; and that he, the said William S. Blight, and said plaintiff, did each appoint a person to inventory and appraise as joint property of said plaintiff and said Mrs. Sergeant, the chattels then being on the premises, and that such inventory and appraisement were actually drawn up in writing, as in said bill declared.

And these defendants further say, that soon after the death of Mrs. Sergeant, finding that said plaintiff, upon various pretences and allegations, continued in possession of said lot and premises, and refused to surrender the same, the said Mary V. Blight brought an action of ejectment against him in the District Court for the city and county of Philadelphia, for the recovery of the same, in defending which said action, said plaintiff relied upon and defended his hostile possession by endeavouring to set up against said Mary V. Blight, and after her death, which occurred during the pendency of said action, against her personal representatives, who were substituted in her place in said action, substantially the same writings, facts, and allegations in said bill set forth; but the said defendants, who became, by substitution, plaintiffs in such action of ejectment, notwithstanding the earnest and determined resistance of said plaintiff, by counsel, recovered judgment against him for said premises, which judgment the Supreme Court of the State of Pennsylvania in error confirmed, whereupon these defendants were put in possession of the said premises by a writ of *habere facias possessionem*. And the said plaintiff, being so out of possession, brought a second action of ejectment against these defendants, or such of them as had been put in possession, or were proper parties thereto, in the same Supreme Court at Nisi Prius; but subsequently, when the same was called for trial, suffered a nonsuit.

And these defendants further say, that the evidence in said bill mentioned as offered by said plaintiff in said action of ejectment, and ruled out or rejected by said District Court, was so ruled out and rejected upon objection made in due form and upon legal grounds, as incompetent, or irrelative or irrelevant, and said ruling out and rejection were passed upon, after

full consideration in said Supreme Court in error, and sustained. And these defendants further show, that they subsequently brought another action in the name of the surviving executors of Mrs. Sergeant against said plaintiff, for mesne profits of said premises, in which they recovered judgment for a very large amount, which was also confirmed by said Supreme Court in Banc; and they herewith exhibit to this honourable Court, exemplifications of the records of said several suits, which, with the opinions of the Courts therein, they pray may be considered as part of this their answer.

And these defendants are advised, that the said Courts last above mentioned are Courts of Equity, for the purpose of recognizing an equitable title to land, and that all the alleged equities of said plaintiff were by them fully considered and adjudicated upon.

And these defendants further say, that said suits referred to in said bill as suits, copies of the docket entries in which are thereto annexed marked G, have been, and, as these defendants are informed and believe, are entirely abandoned, and in fact given up and dropped by the parties thereto, and will never be litigated further. If they should be, the law will adjust completely and satisfactorily the relative rights of the parties.

And these defendants admit that said premises have been in part sold by some of them having the right so to do since their said recovery in ejectment, and that when further opportunity offers they propose to sell more thereof, and that they claim a right so to, notwithstanding said paper of March 2d, 1847, and in said claim are supported by the decisions of the Court as aforesaid.

And these defendants further, the receipt of said letter H, by the said Mary V. Blight in her lifetime, admit, as also the fact that she did not respond to the call or requisition therein made. As to the said letter to Mr. Powel they have no knowledge except from said plaintiff.

And these defendants deny the waste and mismanagement in said bill set forth, but say, that their mode of dealing with their own property is not a matter of complaint proper on the part of said plaintiff.

And as to the disposition made by the several wills of the said Mrs. Sergeant and Mrs. Mary V. Blight, these defendants refer to the original thereof, or properly certified exemplifications of the same, which will be produced.

And these defendants admit that said plaintiff rendered accounts from time to time to Mrs. Sergeant, but at what times

respectively they cannot say; whether the said copies marked K are correct, will appear by a comparison of the same with the originals when produced.

And the said defendants as to the said several interrogatories by the said plaintiff in his said bill numbered respectively, answering, say:

1st. To the first interrogatory they answer, That the said plaintiff, for several years prior to the year 1847, but for how many they do not know, had the care and management of the real estate of the said Mrs. Elizabeth B. Sergeant, who was then and before and afterwards the holder of a very considerable real estate in the city of Philadelphia; that certain portions of said real estate were incumbered respectively with ground rents, mortgages, or other liens, but which of them were so incumbered, or how deeply they were severally incumbered, these defendants cannot now say, without a reference to records that are equally within the knowledge of the plaintiff and subject to his inspection.

2d. To the second interrogatory they answer, That the said Mrs. Sergeant was alarmed and necessarily straitened and embarrassed by the constantly recurring payments of ground rent upon the said lot or premises on the Ridge Road; and that she did, in the year 1842, advertise a large amount of her real estate for sale through a broker, and did not then sell the same; but these defendants answering upon information and belief say, that they believe she did not contemplate in that or any other year the making of an assignment for the benefit of her creditors, and was not regarded by her friends and relatives as insolvent. Whether she was in the habit of raising money for her daily support by paying for the same high rates of interest, or what her hope was as to the amount to be saved out of her property, these defendants have no knowledge.

3d. To the third interrogatory they answer, That they can only answer this interrogatory upon information and belief; and so answering they say that the said plaintiff did not by his active devotion to her interests relieve her from daily embarrassments and actual insolvency, and enable her to leave behind her when she died a large estate. They believe that her leaving a large estate resulted from the ordinary, anticipated, rise in the value of her property, and not from any active devotion or skill of said plaintiff; on the contrary, they believe that said plaintiff is not a person of skill and judgment in the management of such affairs.

4th. To the fourth interrogatory they answer, That the plaintiff's relations with Mrs. Sergeant were so impaired, and her confidence in him so affected prior to her death, that she burnt or cancelled a will making him her executor, and executed another appointing others in his place; that she was the widow of William Sergeant, who was a brother of John and Thomas Sergeant; that she did advise with and take counsel from her said brothers-in-law as to her interests committed to the said plaintiff; that the relations of said plaintiff with said John Sergeant until his death, and with said Thomas Sergeant until Mrs. Sergeant's death were friendly, but what their confidence in him was, these defendants do not know.

5th. To the fifth interrogatory they answer, That on the 25th of March, 1836, the lot, a description of which is annexed to said bill marked A, which they believe to be correct, was conveyed to Mrs. Sergeant, William Maule, Matthew Walker, and John Bosler, subject to a ground rent of \$2000.00 a year; that said lot was wholly unimproved at the time it was purchased by said grantees, but what the taxes upon the same, or the income received therefrom were, they do not know.

6th. To the sixth interrogatory they answer, That said Maule, Walker, and Bosler, on account of insolvency, or for some other reason, did become unable to pay the proportions of the ground rent of said lot, and the greater part of the same was paid from time to time by said Mrs. Sergeant, though a large sum applicable to the arrears of said rent, was at one time recovered from the said Maule by legal process.

7th. To the seventh interrogatory they answer, That suits for ground rent and other proceedings at law directed against said lot were instituted, but as to the facts whether paper B, to said bill annexed, truly describes some or any of said proceedings, and how soon judgments were obtained after issuing the writs therein, these defendants refer to the records of said proceedings; whether the whole estate real and personal of Mrs. Sergeant or the income thereof, was unequal to meet the ground rent, taxes and other charges on the said lot, and the rest of her capital, or whether and how far she was compelled to make sales of her property, and to borrow money to defray the current expenses of living, these defendants cannot say.

8th. To the eighth interrogatory they answer, That they have no knowledge of the matters inquired of in this interrogatory.

9th. To the ninth interrogatory they answer, That they have no knowledge as to the matters inquired of in this interrogatory, further than appears in and from the paper C, which answering upon information and belief, they aver expresses

the entire and final agreement between the said plaintiff and Mrs. Sergeant, as to the terms upon which he assumed the management of said lot.

10th. To the tenth interrogatory they answer, That they are informed and believe that the plaintiff did proceed at certain times, which the records of the Courts will show, to bring about Sheriff's sales of the interests of the said Maule, Walker, and Bosler, but that the object of said sales was to vest the title in said lot in Mrs. Sergeant, to whom the Sheriff's deeds were executed, in severalty for her own use, and not for the joint use of her and said plaintiff. And these defendants believe that the said plaintiff did have said Sheriff's deed in his own possession for a time, but they are now in the possession of these defendants, and were never in said plaintiff's possession for any other purpose, or in any other manner, than the other papers of said Mrs. Sergeant, which he held as her agent.

11th. To the eleventh interrogatory they answer, That an agreement of March 2d, 1847, of which they believe exhibit C is a copy, was executed by Mrs. Sergeant in pursuance of and for the purpose of fully and finally embodying and expressing a prior verbal agreement. And these defendants deny any sums or items of such prior verbal agreement which may be set forth by said plaintiff in his bill, and not as embodied and expressed in said written agreement.

12th. To the twelfth interrogatory they answer, That they have no knowledge of the matters inquired of in this interrogatory.

13th. To the thirteenth interrogatory they answer, That they have no knowledge of the matters inquired of in this interrogatory.

14. To the fourteenth interrogatory they answer, That various improvements were actually placed upon said lot, such as sheds for cattle, hay and cattle scales, fences, stabling, a market-house, a dwelling-house and store, and an hotel; but whether the plaintiff in his said bill has correctly stated the extent of these improvements, they cannot say. These defendants believe that said plaintiff did, for and as agent of Mrs. Sergeant, influence and procure certain Drovers' and Butchers' Associations to establish their markets thereon; and did also, as such agent, cause to be established there a horse and cow market, and also a market for hay, oats, and straw; but what the profits of said lot, if properly managed, would now be, these defendants cannot say; and as to what said profits are, and what they have been since said lot has been in their possession, they are advised that they are not bound to answer.

15th. To the fifteenth interrogatory they answer, That the said plaintiff did not at his own expense and cost, to the amount of \$18,000.00, put up said improvements. He kept a running account with her up to the time of her death, which at first showed him to be from time to time her debtor, and afterwards her creditor, and in which sums paid for said improvements appear to a large amount against her; but although these defendants do not deny that said plaintiff may from time to time have been in fact her creditor on general account during the erection of said improvements, they believe and aver that his said accounts are in many respects mistaken and erroneous, and that at the time they were put in possession of said lot by said action of ejectment, her estate did in justice and equity owe him nothing, and does not now owe him anything.

16th. To the sixteenth interrogatory they answer, That whether said plaintiff did or did not use his own securities at great loss, to provide the means of making said improvements, they do not know; but that if he did so, he did so voluntarily, and with a view to profits expected to result from said agency.

17th. To the seventeenth interrogatory they answer, That they believe exhibits K, to said bill annexed, are copies of certain accounts rendered by said plaintiff, but for greater certainty they beg to refer to the originals, when produced; they do not know the times respectively at which they were rendered.

18th. To the eighteenth interrogatory they answer, That they have been informed and believe that a paper, of which they believe exhibit D to be a copy, was signed by Mrs. Sergeant in her lifetime, at the request of said plaintiff, but they know of no other agreement on her part to sell for any price; whether said plaintiff was prosecuting his endeavours to sell said premises up to the time of her death, they do not know.

19th. To the nineteenth interrogatory they answer, That the plaintiff, as agent of Mrs. Sergeant, did for a certain time, hold certain deeds conveying to Mrs. Sergeant the interests of said Maule, Walker, and Bosler, and also the leases of tenants of said lot, and policies of insurance thereon, and many other papers of Mrs. Sergeant.

20th. To the twentieth interrogatory they answer, That whether exhibits K, I, H, G, F, E, B, are or are not true copies of any original papers in the hands of said plaintiff, they cannot tell, but pray may be made to appear by a production of said originals, and a comparison with those of said copies.

21st. To the twenty-first interrogatory they answer, That a paper was in the possession of Mrs. Sergeant at one time, pur-

porting to be her last will and testament, and naming said plaintiff and Mr. John Sergeant her executors, but these defendants have no knowledge of the date or any clear recollection thereof; that said writing was destroyed by Mrs. Sergeant herself, by being burnt, upon the execution by her of another subsequent will, which is the one proved as her last will, and filed as such in the Register's office.

22d. To the twenty-second interrogatory they answer, That by the request of Mrs. Sergeant, who was anxious to have one of her own family there to look after her interests, said William S. Blight, who was her grandson, was employed as book-keeper in respect of the business done at said lot, and received a salary of \$150.00; that said employment was consented to by said plaintiff; that it was said Blight's duty usually to be about said premises, and that he considered himself generally under Mr. Wright's direction, though no formal command to that effect was given, as he recollects.

23d. To the twenty-third interrogatory they answer, That exhibit F is, they believe, a true copy of the last will and testament of Mrs. Sergeant, proved in the Register's office, but for greater certainty they refer to the original, when produced.

24th. To the twenty-fourth interrogatory they answer the said William S. Blight upon recollection, and the other defendants upon information and belief, That soon after the death of Mrs. Sergeant, the said William S. Blight being in the office of Thomas Sergeant, the said plaintiff entered, and thereupon a conversation ensued about the estate of the said Mrs. Sergeant, of the details of which the said William S. Blight has no recollection, but upon recollection and belief he denies, and the other defendants therefore also deny that he, the said William S. Blight, did receive from the said Thomas Sergeant, and assent to any such advice or opinion as that in said bill represented to have been given by Mr. Thomas Sergeant, or did express that he and the other executors were about to take such a course as that indicated in said supposed advice or opinion.

25th. To the twenty-fifth interrogatory they answer, That they have no knowledge of the preparation of any such draft of an inventory.

26th. To the twenty-sixth interrogatory they answer, That an action of ejectment for said premises was brought by the said Mary V. Blight against the plaintiff, after the death of her mother, the said Mrs. Sergeant, upon the trial of which a large part of the evidence offered by said defendant was rejected as incompetent or irrelevant; a charge of the Court

given in favour of the plaintiff, in whose favour a verdict was found and a judgment rendered, which was affirmed by the Supreme Court in error; that thereupon, under a writ of *habere facias possessionem*, possession was taken of said premises by the plaintiff in said action; and that subsequently the executors of said Mrs. Sergeant did recover from said plaintiff a large sum for the mesne profits of said premises; and that said defendant did defend and resist said actions to the utmost of his power, as these defendants believe, by counsel and otherwise.

27th. That the action secondly referred to in said exhibit G, was brought, and has never been determined. What the cause of action thereon is, these defendants do not know, further than appears of record; and these defendants have reason to believe that said action is abandoned, and will never be pressed further. Of the position of the said appeal from the judgment of Alderman Guyer, first mentioned, they have no knowledge, and believe the plaintiff therein has also abandoned his claim. Whether said exhibit G presents an accurate copy of the docket entries in said cause, they do not know, but refer to the originals for greater certainty.

28th. To the twenty-eighth interrogatory they answer, That certain of the defendants, representing the estate of the said Mrs. Sergeant, have since her death sold and conveyed certain portions of said premises; but they are advised that they are not required to answer this interrogatory further.

29th and 30th. To the twenty-ninth and thirtieth interrogatories they answer, That they are advised that they are not obliged to make answer thereto.

31st. To the thirty-first interrogatory they answer, That the devisees and representatives of the said Mrs. Mary V. Blight and their vendees are the only persons interested in said premises; that said devisees and representatives are the said William S. Blight, Isaac O. Blight, Elizabeth S. Garrett, Deborah Blight and J. Dickinson Sergeant.

32d. To the thirty-second interrogatory they answer, That on the 21st day of June, the said Mary V. Blight did receive a letter from the said Jacob O. Ewing, to which she made no answer, but whether the copy thereof set forth in exhibit H is correct, they pray may be shown by reference to the original; and whether any letter was addressed to and received by the said John Hare Powel they do not know.

33d. To the thirty-third interrogatory they answer, That they believe that certain of the deeds of the said premises, but which they cannot now say, were, at the death of Mrs. Ser-

geant, in the possession of counsel, who now holds them. But they are informed by said counsel, and believe that he always understood that he was counsel in respect to said lot and premises, for Mrs. Sergeant in her lifetime, and for Mr. Ewing as her agent, and that he never believed, and does not now believe, that said deeds belong to said plaintiff, or that his direction or permission, since the death of Mrs. Sergeant, as to said deeds is of any avail.

And these defendants as to so much and such parts of said bill as pray for, and are directed to sustain the prayer for an injunction to restrain them from selling or disposing of, and making title to any portion of said lot or premises, and from receiving the rents therefrom, and from interfering in any way with the control and management thereof, and to forbid them to proceed at law upon, or use in any way their legal title or right of possession in and to the same; and also as to so much and such parts of said bill as are directed to, and contain the several prayers for a sale of said premises, or the delivery of the same and the possession thereof to said plaintiff to be controlled and managed by him, or for the appointment of a trustee or receiver thereof, these defendants say that said plaintiff is not entitled to any relief from a Court of Equity, and they pray that they may have the same benefit from this defence as if they had demurred to said parts of said bill.

And as to so much of said bill and such parts thereof as pray for, and are directed to sustain the prayer for an account between said parties in respect of said lot under said agreement of March 2d, 1847, and for a decree for what may be found due to said plaintiff, these defendants further answering say, That on the 23d day of July, A. D. 1853, the said plaintiff, claiming to be a creditor of the estate of the said Mrs. Sergeant, filed his petition in the Orphan's Court of the county of Philadelphia, praying for a citation against her executors to compel them to file an account of the said estate; whereupon, on the 21st day of October, A. D. 1853, said executors filed a final account of said estate, showing a balance for distribution among creditors, if there were any, and if none, to the legatee under her will, which said account was referred to an auditor to audit, settle and adjust the same, and report distribution; and said auditor after hearing all the parties who came before him, and after having given full and due notice according to law by advertisement, awarded part of said fund to the payment of certain debts, but none to said plaintiff, and awarded the balance to the executors of the said Mary V. Blight as legatee

of said Mrs. Sergeant; that said report was subsequently, to wit, on the 3d day of March, A. D. 1854, confirmed by said Court, so that the awards of said auditor became and have ever since been decrees of said Court, and the executors of said Mary V. Blight have received and hold the sums awarded to them, and are bound to account for the same. And these defendants are advised and expressly charge and allege, that by the laws of Pennsylvania said decree of confirmation concludes and estops said plaintiff from making any further claim against the estate of the said Mrs. Sergeant.

And your orators further show, that to March Term of said Supreme Court of Pennsylvania, at Nisi Prius, No. 139, said plaintiff commenced an ~~action of assumpsit~~ against the said executors of the said Elizabeth B. Sergeant, in which he filed the usual money counts, and presented a bill of particulars which is filed of record in said suit; that in said suit the said plaintiff claimed the entire balance due to him as well in respect of said lot, and the business of the same under said paper of March 2d, 1847, and the improvements thereon and profits thereof up to the time of her death, as upon all other accounts; that at the trial of said suit the books of said business were before the jury, for the purpose of a full and fair adjustment of the whole account between the parties, and that for and in respect of and resulting from all dealings whatever, as these defendants are informed and believe, between said plaintiff and said Mrs. Sergeant in her lifetime, said jury found a verdict in favour of said plaintiff for the sum of \$13,314.30, upon which verdict judgment has been entered which is now pending in error, upon the usual certificate, in the said Supreme Court in Banc. And these defendants not only allege that neither said balance nor any other balance is due to said plaintiff, but rely as against said last mentioned verdict and judgment upon the effect of the said conclusion and estoppel of the said decree of the said Orphan's Court. And they, herewith, propose to exhibit the said exemplifications of the records of the said Orphan's Court and Supreme Court, and pray that they may be taken as parts of this answer, and that they may have the same benefit thereof as if they had pleaded the same in bar.

And these defendants deny all and all manner of unlawful acts wherewith they are charged in and by said bill, without this that there is any other matter cause or thing in said complainant's said bill of complaint contained, material or necessary for their defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed,

and avoided or denied, is true to their knowledge or belief; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. S. BLIGHT,
I. O. BLIGHT,
E. S. GARRETT,
THOS. H. GARRETT,
J. D. SERGEANT.

E. SPENCER MILLER,
Sol. and of Counsel for defendants.

UNITED STATES:

Eastern District of Pennsylvania.

On this twentieth day of November, A. D. 1857, before me, Charles F. Heazlitt, a Commissioner appointed by the Court of the United States, in and for the Eastern District of Pennsylvania, in the third Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared William S. Blight, Isaac O. Blight, and Elizabeth S. Garrett, who, being severally duly sworn, did depose and say, that they have read the foregoing answer, and know the contents thereof, and that the same are true, so far as they are therein stated upon and of their own knowledge, and so far as they are therein stated on their information and belief, they believe them to be true. And the said Thomas H. Garrett, another of said defendants, being also sworn, says, that answering upon information and belief, the contents of said answers are true, to the best of his knowledge and belief.

CHAS. F. HEAZLITT,
U. S. Commissioner.

UNITED STATES:

Eastern District of Pennsylvania.

On this thirtieth day of November, A. D. 1857, before me, Charles F. Heazlitt, a Commissioner appointed by the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the third Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared J. Dickinson Sergeant, who, being duly affirmed, did depose and say, that he has read the foregoing answer, and knows the contents thereof, and that the same are true, so far as they are therein stated upon and of his own knowledge, and so far as they are stated on his information and belief, he believes them to be true.

CHAS. F. HEAZLITT,
U. S. Commissioner.

